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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.670 of 2002

Hariram

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree

Sd/-
Sunil Kumar Sinha
Judge

POST FOR PRONOUNCEMENT OF JUDGMENT ON 15th OCTOBER, 2007

Sd/-
L.C. BHADOO
Judge

(18)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.670 of 2002

APPELLANT:
(In Jail)

Hariram, S/o Itwarsingh
Kanwar, aged 28 years,
R/o Village Banai,
P.S. Gharghoda,
District: Raigarh
(Chhattisgarh).

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through P.S. Gharghoda,
District Raigarh (C.G.).

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Appearance:

Mr. Anand Mohan Tiwari, counsel for the appellant.

Mr. Akhil Mishra with Mr. Ravindra Agrawal, Panel Lawyers for the State/ respondent.

Division Bench: Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.

JUDGMENT

(Delivered on 15th October, 2007)

The following judgment of the Court was delivered by **L.C. Bhadoo, J.**: -

1. By this appeal accused Hariram has questioned legality and correctness of his conviction under Sections 302 & 324 of the I.P.C. and sentence of life imprisonment and imprisonment for one year imposed therein for committing the murders of his wife & two minor children, and inflicting simple injury with axe to one Dhansai, passed by 3rd Additional Sessions Judge (Fast Track Court), Raigarh in S.T. No.243/2000 vide judgment dated 19-3-2002.

2. The case of the prosecution, in brief, is that on 21-9-2000, in the night, when Dhansai along with Sidar, Karamsai and Bhagatram were sitting at Chaupal of the village, Ganeshram came there and informed that children of the accused are crying in his house, therefore, they along with Dhansai arrived at the house of the accused. They saw that the door of the house was closed from inside. The accused was asked to open the door, but he did not open the door, therefore, Dhansai pushed the door, thereby half

portion of the door fell down, on which villagers saw that wife of the accused was lying in injured condition whereas, son of the accused namely, Tarachand and daughter Gauri Bai were lying dead. The accused was holding axe in his hand. The room was full of blood. When Dhansai attempted to catch the accused, the accused attacked him with axe on right thigh region, in turn, Dhansai attacked the accused with lathi and caught hold of him. In the meantime, other persons came, overpowered the accused and tied him with rope. After some time, wife of the accused breathed her last. Villagers informed the police. Head Constable Ganesh Ram Sahu wrote merg intimation and Dehati Nalishi.

3. R.J. Dewangan (PW-10), Assistant Sub Inspector, reached the spot, after giving notice to the Panchas, he prepared inquest on the bodies of Gauri Bai, Tarachand & Bhagwati Ex.P/4, P/5 and P/6 respectively. The dead bodies were sent for postmortem examination to the Government Hospital, Gharghoda. Dhansai was also sent for medical examination. The axe snatched by Dhansai from the accused was seized under Ex.P/9. The clothes of the accused stained with blood were seized under Ex.P/12. Dr. S.N. Kesari (PW-11) conducted postmortem on the bodies of Bhagwati, Tarachand & Gauri Bai. He prepared postmortem report Ex.P/23 in respect of Bhagwati Bai, Ex.P/24 in respect of Tarachand & Ex.P/25 in respect of Gauri Bai, opined that cause of death of Gauri Bai was shock & haemorrhage as a result of multiple injuries inflicted on body, death was homicidal in nature; cause of death of Tarachand was also shock & haemorrhage as a result of multiple injuries inflicted on body, death was homicidal in nature; cause of death of Bhagwati was shock & haemorrhage as a result of multiple injuries inflicted on body, death was homicidal in nature. Weapon of offence i.e. axe was sent for examination to the Assistant Surgeon under Ex.P/14, after examination, he opined that injuries found on the bodies of the deceased persons could be caused by the axe in question. He prepared the report Ex.P/14-A. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur from where report Ex.P/16 was received. As per the report, undergarment 'H' of Tarachand, undergarment 'I' of Gauri Bai, Towel 'J1' of the accused, Lungi 'J2' of the accused, Sari 'K1' of Bhagwati and Petticoat 'K2' of Bhagwati were found stained with blood.

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4. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh from where learned 3rd Additional Sessions Judge (FTC), Raigarh received the case on transfer for trial.

5. The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him and stated that he is innocent. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Mr. Anand Mohan Tiwari, counsel for the appellant and Mr. Akhil Mishra with Mr. Ravindra Agrawal, Panel Lawyers for the State/ respondent.

7. Learned counsel for the accused/appellant while drawing attention of the Court towards cross-examination of the prosecution witnesses argued that at the time of commission of crime the accused was suffering from unsoundness of mind, therefore, he is entitled for the benefit of Section 84 of the IPC. He further argued that the prosecution witnesses in their cross-examination have categorically stated that at the time of commission of crime and thereafter the accused was suffering from unsoundness of mind, this fact has not been considered by the trial Court.

8. On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

9. Having heard learned counsel for the parties, we have perused the record. As far as involvement of the accused/appellant in the crime in question is concerned, that has not been disputed by learned counsel for the accused/appellant. Moreover, PW-1 Sidar has stated that in the fateful night at about 9 p.m. he and Mangal, Vijay Ram, Mureet were sitting in the Chaupal of the village. At that time, Ganesh Ram came and informed that there is commotion in the house of Hariram, therefore, they arrived at the house of Hariram, saw that the door was closed from inside. They opened the door and saw that the bodies of two children were lying in the room, lot of blood splashed on the ground, wife of the accused was also lying dead. Father of the accused said that his son has committed the

murders of his children. In cross-examination, this witness has stated that earlier the accused was alright but later on he became just like a mad. At that time of incident also he was mad. PW-2 Karam Sai has also corroborated the above evidence. He has stated that father of the accused came to his house, said that the accused is quarrelling with his children, further said that there is lot of blood in the house, therefore, he went to the house of the accused and saw that both the children were lying dead, wife of the accused was crying for water, therefore, she was provided with water, thereafter she died. They saw that the accused was tied. After seeing the bodies they became frightened. In the meantime, Police came and Dhansai gave axe stained with blood to the police. In cross-examination, he has stated that initially the accused was not mad, but 2-4 months prior to the date of the incident he became mad. At the time of the incident he was looking like a mad.

10. PW-4 Bhagat Ram has also corroborated the above evidence regarding seeing bodies of the wife and two children of the accused in the house. In cross-examination, he has stated that when he went to the house, he saw that the accused was tied with the help of a rope. Villagers were standing there. PW-5 Dilip Sai has also corroborated the above evidence. In cross-examination, he has stated that when he reached the house, the accused was tied with the help of a rope. Even prior to the incident father of the accused informed him that the accused has become mad. On the date of the incident he was looking like a mad. As and when he was under the fit of madness he used to keep mum. PW-6 Dhansai has also corroborated the above evidence. He has stated that they went to the house of the accused, they knocked the door, but he did not open the door, therefore, they pushed the door. One part of the door fell down. In the light of torch, they saw that son and daughter of the accused were lying dead. Wife of the accused was also lying dead. After seeing the accused, persons started running but he remained behind. The accused attacked him with axe, therefore, in turn, he attacked the accused with lathi and snatched the axe, thereafter the accused was tied with the help of a rope. Villagers collected there. In cross-examination, he has stated that prior to the incident the accused was not mad, but at the time of the incident, he was looking like a mad. The accused used to earn his livelihood by agricultural operations.

11. PW-11 Dr. S.N. Kesari has stated that on 22-9-2000 he conducted postmortem on the body of Bhagwati. He noticed that there was incised wound on the mandible. There was incised wound on the left clavicle in the size of 6 x 2.5 cms., incised wound on the left scapular region, 4 incised wounds above injury No.3 and 3 incised wounds below injury No.3. All the injuries were ante mortem in nature. Cause of death was shock and haemorrhage. His report is Ex.P/23. He has further stated that on the same day he conducted postmortem on the body of Tarachand. He noticed that there was a fracture of mandible bone and one incised wound on the back side of the head. Bone was fractured. Cause of death was shock and haemorrhage. His report is Ex.P/24. He has further stated that on the same day he conducted postmortem on the body of Gauri Bai. He noticed that there was incised wound on the neck. Cervical bone was fractured. There was incised wound on the chest and also on the neck. She died on account of shock and haemorrhage. His report is Ex.P/25. He has further stated that death of all the 3 persons was homicidal. He has stated that on 5-10-2000 axe was produced before him. He examined the axe and same was found stained with blood. All the injuries found on the bodies of the deceased persons could be caused by the axe in question. Therefore, from the above evidence, it is established that in fact, room was closed from inside where all the witnesses saw the dead bodies of two children and wife of the accused. The accused was holding axe in his hand. When they tried to catch him, he attacked Dhansai with same axe that was snatched. There is no explanation of the accused as per the provisions of Section 106 of the Evidence Act that how these three persons i.e. wife and two children of the accused met with homicidal death. Therefore, involvement of the accused/appellant, in view of the above evidence, is established.

12. Now, coming to the arguments advanced by learned counsel for the accused/appellant, it is true that the trial Court has not considered the plea of insanity of the accused at the time of commission of crime. Even though in cross-examination of the witnesses it has come that the accused was just like a mad, even at the time of commission of crime he was looking like a mad. Moreover, in the evidence of the prosecution, no clear evidence has come as to why the accused has committed the murders of 3 innocent family members. Considering all the aspects, it was thought proper to get the accused medically examined from

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Specialist, Department of Psychiatry, Pt. J.N.M. Medical College & BRAM Hospital, Raipur, in order to ascertain regarding mental condition of the accused especially at the time of commission of crime. As per the report sent by Dr. Manoj K. Sahu, Assistant Professor & Head, Deptt. of Psychiatry, Pt. J.N.M. Medical College & BRAM Hospital, Raipur, the accused was admitted in the Psychiatry Ward on 18-9-2007. After detailed examination and review of old treatment records of Mental Hospital, Gwalior and Ambedkar Hospital, Raipur, it was revealed that the accused is having severe psychiatric illness (schizophrenia) since February, 2001. It has further been mentioned that in view of the nature of illness and patient's condition, it is probable that he was having psychiatric illness at the time of commission of crime i.e. 21-9-2000.

13. In order to seek protection under Section 84 of the Indian Penal Code, the onus is on the accused to establish that at the time of commission of offence he was suffering from unsoundness of mind. Section 84 contemplates that;

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

14. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed and in order to ascertain whether the accused was suffering from unsoundness of mind so as to entitle for the benefit of Section 84 of IPC can only be established from the circumstances, which preceded, attended and followed the crime. As per the provisions of Section 105 of the Evidence Act, there is burden on the accused to discharge the same in order to claim benefit of Section 84 of the I.P.C. Section 105 envisages that;

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

The provisions of Section 84 of IPC read with Section 105 of Evidence Act came up for consideration before the Hon'ble Apex Court in the matter of

Dahyabhai V. State of Gujarat[1] wherein the Hon'ble Apex Court held that:

> "The prosecution, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of such circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden."

15. In the present case, report of Dr. Manoj K. Sahu, Assistant Professor & Head, Deptt. of Psychiatry, Pt. J.N.M. Medical College & BRAM Hospital, Raipur, which has been mentioned above, establishes that the accused was severe patient of schizophrenia since February, 2001. It has further been mentioned that looking to the ailment of the accused, probably he was suffering from psychiatric illness at the time of commission of crime i.e. 21-9-2000.

16. In the matter of **Shrikant Anandrao Bhonsle V. State of Maharashtra**[2], the Hon'ble Apex Court placing reliance on the Modi's Medical Jurisprudence and Toxicology (22nd Edition) observed that:

> "What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment. Paranoid Schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develops into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but are afterwards changes into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or

[1] 1964 (7) SCR 361
[2] AIR 2002 SC 3399

some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation gives rise to hallucinations, which are attributed to the effects of hypnotism, electricity wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from prosecutory to the grandlose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversations is directed to the particular type of delusions from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others."

(Emphasis supplied)

17. In a paper published on 'Schizophrenia' written by Melissa K. Spearing, M.H.S. of the Office of Communications and Public Liaison, NIMH based on the study, research and resources of National Alliance for the Mentality III (NAMI), National Mental Health Association (NMHA) & National Institute of Mental Health Association (NIMH). It has been stated in the said paper that Schizophrenia is a chronic, severe and disabling brain disease. The severity of symptoms and long-lasting chronic pattern of Schizophrenia often cause a high decree of disability. The first signs of Schizophrenia often appear as confusing, or even shocking, changes in behaviour. However, the individual with "chronic" schizophrenia, or a continuous or recurring pattern of illness, often does not fully recover normal functioning and typically requires long term treatment, generally including medication, to control the symptoms. Coping with the symptoms of schizophrenia can be especially difficult for family members who remember how involved or vivacious a person was before they became ill. The sudden onset of severe psychotic symptoms is referred to as an "acute" phase of schizophrenia. "Psychosis", a common condition in schizophrenia, is a state of mental impairment marked by hallucinations, which are disturbances of sensory perception, and/or delusions, which are false yet strongly held personal beliefs that result from an inability to separate real from unreal experiences. Less obvious symptoms, such as

social isolation or withdrawal, or unusual speech, thinking; or behaviour, may precede, be seen along with, or follow the psychotic symptoms.

18. Delusions are false personal beliefs that are not subject to reason or contradictory evidence and are not explained by a person's usual cultural concepts. Delusions may take on different themes. For example, patients suffering from paranoid-type symptoms roughly one-third of people with schizophrenia often have delusions of persecution, or false and irrational beliefs that they are being cheated, harassed, poisoned, or conspired against. These patients may believe that they, or a member of the family or someone close to them, are the focus of this persecution. Schizophrenia often affects a person's ability to "think straight". Thoughts may come and go rapidly; the person may not be able to concentrate on one thought for very long and may be easily distracted, unable to focus attention. People with paranoid and psychotic symptoms, which can become worse if medications are discontinued, may also be at higher risk for violent behaviour. When violence does occur, it is most frequently targeted at family members and friends, and more often takes place at home.

(Emphasis supplied)

19. In the matter of **Bapu @ Gajraj Singh vs. State of Rajasthan**[3] the Apex Court held that there are two types of insanity i.e. (i) legal insanity; and (ii) medical insanity. The Court is concerned with legal insanity, and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1872, is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil case. The Court further held that 'in all cases, where previous insanity is proved or admitted, certain considerations have to be borne in mind. Maybe summarizes them as follows:

"Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detections whether, after his arrest, he offered false

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[3] 2007 AIR SCW 3808

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excuses and made false statements. All facts of this sort are material as bearing on the test, which Bramwall, submitted to a jury in such a case."

20. The Court further held that 'the onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.

21. Applying the above principle on the facts of the present case, as per the prosecution witnesses' evidence, which has been referred above, it has come on record that even prior to the incident the accused was behaving like a mad person, even at the time of commission of crime, he was looking like a mad. Moreover, the accused has committed 3 murders of his family members i.e. wife and two children, as per the report of Dr. Manoj K. Sahu, Assistant Professor & Head, Deptt. of Psychiatry, Pt. J.N.M. Medical College & BRAM Hospital, Raipur, dated 26-9-2007, the accused is severe patient of psychiatric illness (schizophrenia), even at the time of commission of crime, looking to his condition, probably he was suffering from the said disease. So this medical evidence also corroborated the evidence of the prosecution witnesses who have stated that at the time of commission of crime the accused was just like a mad. This aspect was not taken into consideration by the investigating officer. He did not subject the accused to medical examination rather, in cross-examination question was put to him, then he has stated that the accused was mentally alright, which is not correct. This is a serious infirmity which creates doubt in the prosecution case as per the judgment of the Apex Court in **Bapu @ Gajraj Singh**'s case (Supra). Therefore, the accused is entitled for benefit of doubt. Moreover, from the material available on record, from cross-examination of the prosecution witnesses, as also as per the report of Dr. Manoj K. Sahu, Assistant Professor &

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Head, Deptt. of Psychiatry, Pt. J.N.M. Medical College & BRAM Hospital, Raipur, dated 26-9-2007, establishes that the accused was severe patient of schizophrenia, looking to the past history, probably he was suffering from mental illness at the time of commission of crime. When delusion of schizophrenia affects behaviour of the patient, he is often a source of danger to himself and to others. People with paranoid and psychotic symptoms, which can become worse if medications are discontinued, may also be at higher risk for violent behaviour. When violence does occur, it is most frequently targeted at family members and friends, and more often takes place at home. As per the report of the doctor, who has examined and reviewed the old treatment records of Mental Hospital, Gwalior and Ambedkar Hospital, Raipur, it appears that treatment was discontinued, therefore, schizophrenic illness increased and in that delusion the accused/appellant appears to have committed the crime. Therefore, from the medical report, evidence of the prosecution witness, coupled with the manner in which he committed the murder of three innocent family members without any reason, it is established that the accused was afflicted of schizophrenia at the time of commission of crime.

22. For the foregoing reasons, conviction and sentences imposed upon the accused/appellant under Sections 302 and 324 of the IPC cannot be sustained.

23. In the result, the appeal succeeds. Conviction and sentences imposed upon the accused/appellant under Sections 302 and 324 of the IPC are set aside giving him benefit of Section 84 of the IPC. He is acquitted of the said charges. He be set at liberty forthwith, if not required in any other case. Looking to the provisions of Mental Health Act, 1987, if the accused is still suffering from schizophrenia, then concerned Superintendent, Central Jail is directed to ensure that the accused is admitted in the Mental Hospital for his treatment.

Sd/-
L.C. BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

Barve